

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35953

OAKLAND GLOBAL RAIL ENTERPRISE, LLC—OPERATION EXEMPTION—LINES OF  
RAILROAD OWNED BY THE PORT OF OAKLAND, CAL.,  
AND THE CITY OF OAKLAND, CAL.

Decided: September 25, 2015

On August 12, 2015, Oakland Global Rail Enterprise, LLC (OGRE) filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 to operate as a common carrier over approximately 60,670 feet of track owned by the Port of Oakland, Cal. (Port), and approximately 32,690 feet of track owned and/or being constructed by the City of Oakland, Cal. (City). On August 26, 2015, OGRE amended its verified notice of exemption, seeking authority to operate over only the approximately 32,690 feet of track owned and/or being constructed by the City, noting that all of the track is or would be located on Port property. On August 27, 2015, OGRE filed a letter clarifying that none of the approximately 32,690 feet of track is or would be located on Port property; instead, the track is or would be located on City property. OGRE states that it has entered into an agreement with the City by which OGRE would operate as a common carrier over the track that the City either currently owns or would construct within the City.

On September 2, 2015, District Lodge 19 of the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), filed a notice of intent to participate in this proceeding. On September 4, 2015, the Port filed a petition for a housekeeping stay, alleging that OGRE has misrepresented several elements of the proposed transaction, and requesting that the Board stay any further consideration of OGRE's verified notice of exemption until all necessary agreements are fully agreed upon and finalized. According to the Port, OGRE's notices are inaccurate regarding OGRE's purported right to operate on Port property. The Port further indicates that as of yet there has been no lease or sublease of City property to OGRE and that railroad improvements or construction on City property have not taken place.

In response to the request for a housekeeping stay, OGRE filed a motion to withdraw its verified notice of exemption without prejudice on September 9, 2015, explaining that there were misunderstandings between OGRE and the Port about when OGRE was planning to seek operating authority from the Board. OGRE wishes to preserve the ability to refile if and when all necessary agreements pertaining to OGRE's operations have been finalized.<sup>1</sup>

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<sup>1</sup> OGRE previously filed notices of exemption seeking similar authority in Docket Nos. FD 35822 and FD 35807, and in Docket No. FD 35639 as West Oakland Pacific Railroad, LLC

OGRE's motion to withdraw its verified notice of exemption without prejudice will be granted, rendering the stay request moot. However, here, as in Oakland Global Rail Enterprise, LLC—Acquisition & Operating Exemption—in the Port of Oakland, Cal., Docket No. FD 35807, it appears that there are plans for track construction activity that may require Board authorization. Specifically, based on OGRE's intent to provide common carrier service over the above-described trackage, the construction to which OGRE refers in its notice appears to involve construction of a line of railroad, in which case prior approval for the construction under 49 U.S.C. § 10901, and an environmental review under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h, would be required. No party, however, has sought Board authority for such construction. Questions as to whether this construction requires Board authority may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance. OGRE should address this construction issue in any future filing.

It is ordered:

1. OGRE's motion to withdraw its verified notice of exemption without prejudice is granted and the request for a housekeeping stay is denied as moot.
2. A copy of this decision will be served on the Port, the City, and IAM.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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( . . . continued)

(WOPR), relating to contemplated operations on Port property. In Docket Nos. FD 35807 and FD 35639, the notices were withdrawn at the request of OGRE and WOPR, respectively, prior to becoming effective, and in Docket No. FD 35822, the notice was vacated after it became effective. In Docket Nos. FD 35807 and FD 35822, OGRE explained its desire to withdraw its notices in part due to confusion or a misunderstanding with respect to the contemplated operations, similar to the instant case.